

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Case No.
)	
v.)	Judge
)	
BRIDGEPORT UNITED)	Magistrate Judge
RECYCLING, INC., and UNITED)	
OIL RECOVERY, INC)	
)	
Defendants.)	
_____)	

CONSENT DECREE

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CONSENT DECREE

WHEREAS, Plaintiff the United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("U.S. EPA" or "EPA"), has filed a Complaint in this action concurrently with this Consent Decree alleging that Defendants, Bridgeport United Recycling, Inc. ("BUR") and United Oil Recovery, Inc ("UOR") (jointly referred to herein as Defendants"), violated Sections of the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. §§ 6901 et seq.;

WHEREAS, Defendants BUR and UOR do not admit any liability to the United States arising out of the alleged violations or factual allegations contained in the Complaint filed concurrently with this Consent Decree;

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated at arms length and in good faith, that implementation of this Consent Decree will avoid prolonged and complicated litigation, and that this Consent Decree is fair, reasonable, and in the public interest;

NOW THEREFORE, with respect to the matters set forth in the Complaint, and before the taking of any testimony, without adjudication of any issue of fact or law except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 28 U.S.C. §§ 1331, 1345, and 1355. Venue is proper in this judicial district pursuant to Section 3008(a)(1) of RCRA, 42 U.S.C. §

6928(a)(1), and 28 U.S.C. §§ 1391(b) and (c), and 1395(a) because the BUR Facility and the UOR Facility are located in this judicial district and the alleged violations took place in this district. For purposes of this Decree, or any action to enforce this Decree, BUR and UOR consent to the Court's jurisdiction and to venue in this judicial district.

2. The Court finds that the Complaint states claims upon which relief may be granted under RCRA.

3. Notice of the commencement of this action has been given to the Connecticut Department of Environmental Protection ("CT DEP") in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

II. APPLICABILITY AND BINDING EFFECT

4. The obligations of this Consent Decree apply to and are binding upon the United States, and upon BUR and UOR and any successors, assigns, or other entities or persons otherwise bound by law.

5. No transfer of ownership or operation of the BUR Facility, as hereinafter defined, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve BUR of its obligation to ensure that the terms of this Decree are implemented unless: (i) the transferee agrees in writing to undertake the obligations required by this Decree and to be substituted for BUR as the defendant under the Decree and thus be bound by the terms thereof; and (ii) the United States consents in writing to relieve BUR of its obligations. At least thirty (30) days prior to such transfer, BUR shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed court order substituting the transferee as the defendant, to U.S. EPA and the United

States Department of Justice in accordance with Section XIII of this Decree (Notices and Submissions) and to the United States Attorney's Office for the District of Connecticut, 157 Church Street, 23rd floor, New Haven, Connecticut 06510.

6. No transfer of ownership or operation of the UOR Facility, as hereinafter defined, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve UOR of its obligation to ensure that the terms of this Decree are implemented unless: (i) the transferee agrees in writing to undertake the obligations required by this Decree and to be substituted for UOR as the defendant under the Decree and thus be bound by the terms thereof; and (ii) the United States consents in writing to relieve UOR of its obligations. At least thirty (30) days prior to such transfer, UOR shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed court order substituting the transferee as the defendant, to U.S. EPA and the United States Department of Justice in accordance with Section XIII of this Decree (Notices and Submissions) and to the United States Attorney's Office for the District of Connecticut, 157 Church Street, 23rd floor, New Haven, Connecticut 06510.

7. BUR or UOR shall provide a copy of the relevant portions of this Consent Decree to all officers, supervisors, and agents whose responsibilities might reasonably include ensuring compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. BUR or UOR shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

8. In any action to enforce this Consent Decree, BUR or UOR shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any

actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

9. Terms used in this Consent Decree that are defined in RCRA or in regulations promulgated pursuant to or authorized by RCRA shall have the meanings assigned to them in RCRA and those regulations, unless otherwise provided in this Consent Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. “BUR Facility” shall mean the hazardous waste treatment, storage, and disposal facility that BUR owns and operates at 50 Cross Street, Bridgeport, Connecticut.
- b. “BUR Tanks” shall mean the ten (10) hazardous waste storage tanks and vapor recovery tank 3A that BUR currently owns and operates at the BUR Facility, and any tank that BUR may install and operate during the life of this Consent Decree that would be subject to the requirements of 40 C.F.R. Part 264, Subpart CC.
- c. “Complaint” shall mean the complaint filed by the United States in this action.
- d. “Consent Decree” or “Decree” shall mean this decree and all appendices attached hereto.
- e. “CT DEP” shall mean the Connecticut Department of Environmental Protection and any of its successors departments or agencies;
- f. “Date of Entry” shall mean the date this Consent Decree is entered by the Clerk of the Court of the United States District Court for the District of Connecticut.
- g. “Date of Lodging” shall mean the date this Consent Decree is lodged with the Clerk of the Court of the United States District Court for the District of Connecticut for

public comment prior to its approval and/or entry by the Court.

h. “Day” shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

i. “Defendants” shall mean Bridgeport United Recycling, Inc., and United Oil Recovery, Inc.

j. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

k. “Paragraph” shall mean a portion of this Consent Decree identified by an arabic numeral.

l. “Parties” shall mean the United States, Bridgeport United Recycling, Inc., and United Oil Recovery, Inc.

m. “Section” shall mean a portion of this Consent Decree identified by a roman numeral.

n. “State” shall mean the State of Connecticut.

o. “UOR Facility” shall mean the hazardous waste treatment, storage, and disposal facility that UOR owns and operates at 136 Gracey Avenue, Meriden, Connecticut.

p. “United States” shall mean the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTY

10. Within thirty (30) days after the Date of Entry of this Consent Decree, BUR shall

pay \$205,798.00 as a civil penalty, plus an additional sum for interest on that amount calculated as follows:

- a. if Defendants execute and return this Consent Decree to the United States on or before December 12, 2007, and payment is timely, no interest shall accrue;
- b. if Defendants execute and return this Consent Decree to the United States on or before December 12, 2007, but payment is not timely, interest shall be calculated from the date 30 days after the effective date of this Consent Decree until the date of payment; and
- c. if Defendants do not execute and return this Consent Decree to the United States by December 12, 2007 interest shall be calculated from December 12, 2007 until the date of payment.

The rate used to calculate interest shall be the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

11. Within thirty (30) days after the Date of Entry of this Consent Decree, UOR shall pay \$119,392.00 as a civil penalty, plus an additional sum for interest on that amount calculated as follows:

- a. if Defendants execute and return this Consent Decree to the United States on or before December 12, 2007, and payment is timely, no interest shall accrue;
- b. if Defendants execute and return this Consent Decree to the United States on or before December 12, 2007, but payment is not timely, interest shall be calculated from the date 30 days after the effective date of this Consent Decree until the date of payment; and
- c. if Defendants do not execute and return this Consent Decree to the United States by December 12, 2007, interest shall be calculated from December 12, 2007 until the date

of payment.

The rate used to calculate interest shall be the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

12. Defendants shall pay the civil penalty due by FedWire Electronic Funds Transfer (“EFT”) to the United States Department of Justice in accordance with written instructions to be provided to Defendants, following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for the District of Connecticut, 157 Church Street, 23rd floor, New Haven, Connecticut 06510, (203) 773-5392. At the time of payment, Defendants shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. Bridgeport United Recycling, Inc., et al., and shall reference the civil action number, the USAO File Number 2007V1105, DOJ Case Number 90-7-1-08350, to the United States in accordance with Section XIII (Notices and Submissions) of this Decree; by email to acctsreceivable.CINWD@epa.gov; and to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268.

13. Upon entry, this Decree will constitute an enforceable judgment for purposes of post-judgment collection in accordance with Rule 69 of the Federal Rules of Civil Procedure, the Federal Debt Collection Procedure Act, 28 U.S.C. §§ 3001-3308, and other applicable federal authority. The United States will be deemed a judgment creditor for purposes of collection of any unpaid amounts of the civil and stipulated penalties and interest.

14. Defendants shall not deduct any civil penalties paid under this Decree pursuant to

this Section or Section VII (Stipulated Penalties) in calculating their federal income tax.

V. COMPLIANCE REQUIREMENTS

15. Defendants shall comply with RCRA and regulations promulgated thereunder, including provisions setting forth air emission standards for equipment leaks, found at 40 C.F.R. Part 264, Subpart BB, and provisions setting forth air emission standards for certain tanks, surface impoundments and containers, found at 40 C.F.R. Part 264, Subpart CC, with respect to the BUR Facility and the UOR Facility.

16. BUR shall operate and maintain its carbon adsorption system in accordance with the requirements of 40 C.F.R. § 264.1087 and the terms of this Consent Decree.

17. Within thirty (30) days after the effective date, BUR shall submit to EPA for approval a report describing measures to be implemented to automate and upgrade the closed-vent system and control device at the BUR Facility ("Control Device Report"). The measures to be proposed in the Control Device Report shall include, at a minimum, the following:

- a. Installation of high-level audible and visual alarms that will be triggered when the calculated maximum outlet concentration meets or exceeds 3000 ppm as methane or when a pre-set time limit is met or exceeded;
- b. Capacity to automatically switch carbon beds upon meeting or exceeding the calculated maximum outlet concentration threshold or pre-set time limit (for purposes of this paragraph, the automatic regeneration cycle will be triggered at 4300 ppm of methane);
- c. Provisions for a constant cooling water supply sufficient for steam-cleaning the carbon beds;
- d. A proposal to increase the operational rate of the blower attached to the

carbon adsorption system to ensure that the system is operated continuously with negative pressure throughout the closed-vent system, including within the headspace of the hazardous waste tanks. The proposal shall include data which documents that the proposed flow-rate results in negative pressure in all tanks connected to the closed-vent system under normal operating conditions;

e. a schedule for implementing the foregoing measures, which shall not exceed 60 days from EPA's approval of the Report.

18. In April 2007 BUR submitted a Design Analysis report for its carbon adsorption system. Within 30 days after the effective date, BUR shall submit to EPA a revised Design Analysis that shall also incorporate the following elements:

a. Carbon capacity (in days) and maximum outlet concentration (in ppm as methane) calculated for a range of inlet loadings from 1.0 lb/hr to 17.14 lb/hr. The carbon capacity and maximum outlet concentration shall be calculated for every 0.5 lb/hr and an analysis provided for the calculated values for which breakthrough would be experienced or when the 95% removal efficiency would not be achieved;

b. A description of the inlet and outlet concentration monitoring devices to be installed and the calibration gases to be utilized as part of the automation of the carbon adsorption system; and

c. A summary of the concentrations measured at the outlet of the carbon adsorption system from January 1, 2006 to the present.

19. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted pursuant to this Consent Decree, EPA after consultation with the State

shall in writing: a) approve the submission; b) approve the submission upon specified conditions; c) approve part of the submission and disapprove the remainder; or d) disapprove the submission.

20. If the submission is approved pursuant to Paragraph 19.a, Defendants shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 19.b or c, Defendants shall, upon written direction of EPA, take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions, subject to Defendants' right to dispute only the specified conditions or the disapproved portions, under Section IX (Dispute Resolution) of this Decree.

21. If the submission is disapproved in whole or in part pursuant to Paragraph 19.c or d, Defendants shall, within forty-five (45) days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Defendants shall proceed in accordance with the preceding Paragraph.

22. Any stipulated penalties applicable to the original submission, as provided in Section VII of this Decree, shall accrue during the forty-five (45) day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Defendants' obligations under this Decree, the stipulated penalties applicable to the

original submission shall be due and payable notwithstanding any subsequent resubmission.

23. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require Defendants to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself correct any deficiencies, subject to Defendants' right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties as provided in the preceding Paragraphs.

24. Permits. Where any compliance obligation under this Section requires Defendants to obtain a federal, state, or local permit or approval, Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendants may seek relief under the provisions of Section VIII (Force Majeure) of this Consent Decree for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendants have submitted timely and complete applications and have taken all other actions necessary to obtain all such permits or approvals.

VI. REPORTING REQUIREMENTS

25. Defendants shall submit the following reports:

- a. Within thirty (30) days after BUR has installed the automatic switching device for the carbon beds in the control device, and the end of each calendar half-year, thereafter until termination of this Decree pursuant to Section XVII, Defendants shall submit a semi-annual report for the preceding half-year that shall include the data results for the measurement of the outlet concentration from the control device and the pressure in the hazardous waste tanks.
- b. The semi-annual report shall also include a description of any non-

compliance with the requirements of this Consent Decree and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If either Defendant violates, or has reason to believe that it may violate, any requirement of this Consent Decree, that Defendant shall notify the United States of such violation and its likely duration, in writing, within ten (10) working days of the day Defendant first became aware of the violation, with an explanation of the violation's likely cause and of the remedial measures taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, that Defendant shall so state in the report. That Defendant shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within thirty (30) days of the day that Defendant becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves either Defendant of its obligations to provide the notice required by Section VIII (Force Majeure) of this Consent Decree.

26. Whenever any violation of this Consent Decree or any other event affecting either Defendant's performance under this Decree, or the performance of the Facilities, may pose an immediate threat to the public health or welfare or the environment, that Defendant shall notify EPA orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after that Defendant first knew of, or should have known of, the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

27. All reports shall be submitted to the persons designated in Section XIII (Notices and Submissions) of this Consent Decree.

28. Each report submitted by a Defendant under this Section shall be signed by an

official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

29. The reporting requirements of this Consent Decree do not relieve either Defendant of any reporting obligations required by RCRA or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

30. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VII. STIPULATED PENALTIES

31. Each Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

32. Late Payment of Civil Penalty

If either Defendant fails to pay the civil penalty required to be paid under Section IV (Civil Penalty) of this Decree when due, that Defendant shall pay a stipulated penalty of \$5,000 per day for each day that the payment is late.

33. For failing to operate the BUR Facility's carbon adsorption system consistent with the requirements of Paragraph 16: \$5,000 per day, per violation.

34. For failing to submit the Control Device Report and/or to automate and upgrade the control device pursuant to the requirements of Paragraph 17; and for failing to submit a revised Design Analysis report pursuant to the requirements of Paragraph 18:

<u>Period of Non-Compliance</u>	<u>Penalty per Day</u>
1 Day	\$500
2 Days	\$1,500
3 or More Days	\$2,500

35. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section VI of this Consent Decree:

<u>Period of Non-Compliance</u>	<u>Penalty per Day per Violation</u>
1 to 30 Days	\$200
31 to 60 Days	\$500
Over 60 Days	\$1,000

36. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

37. Subject to Paragraph 39, Defendants shall pay any stipulated penalty within thirty (30) Days of receiving the United States' written demand.

38. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

39. Stipulated penalties shall continue to accrue as provided in Paragraph 36, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendants shall pay accrued penalties determined to be owing, together with interest, to the United States within thirty (30) Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendants shall pay all accrued penalties determined by the Court to be owing, together with interest, within sixty (60) Days of receiving the Court's decision or order, except as provided in Subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendants shall pay all accrued penalties determined by the Court to be owing, together with interest, within fifteen (15) Days of receiving the final appellate court decision.

40. For stipulated penalties of \$10,000 or less, Defendants shall pay by certified or cashiers check made payable to "U.S. Department of Justice," referencing Defendants' name and address, USAO File Number 2007V1105, and DOJ Case Number 90-7-1-08350. For stipulated penalties of greater than \$10,000, Defendants shall make payment in the same manner set forth in Section IV (Civil Penalty).

41. If Defendants fail to pay stipulated penalties according to the terms of this Consent Decree, Defendants shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for either Defendants' failure to pay any stipulated penalties.

42. Subject to the provisions of Section XI (Effect of Settlement/Reservation of Rights) of this Consent Decree, the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendants' violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of RCRA, Defendants shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

VIII. FORCE MAJEURE

43. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of either Defendant, its contractors, or any entity controlled by that Defendant that delays or prevents the performance of any obligation under this Consent Decree despite that Defendant's best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include either Defendant's financial inability to perform any obligation under this Consent Decree.

44. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event,

Defendants shall provide notice orally or by electronic or facsimile transmission within seventy-two (72) hours of when Defendants first knew that the event might cause a delay. Within seven (7) days thereafter, Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendants' rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendants shall be deemed to know of any circumstance of which Defendants, any entity controlled by Defendants, or Defendants' contractors knew or should have known.

45. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

46. If EPA does not agree that the delay or anticipated delay has been or will be

caused by a force majeure event, EPA will notify Defendants in writing of its decision.

47. If Defendants elect to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), they shall do so no later than fifteen (15) Days after receipt of EPA's notice. In any such proceeding, Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendants complied with the requirements of Paragraphs 43 and 44, above. If Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

IX. DISPUTE RESOLUTION

48. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree.

49. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendants send the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed thirty (30) days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless,

within thirty (30) days after the conclusion of the informal negotiation period, Defendants invoke formal dispute resolution procedures as set forth below.

50. Formal Dispute Resolution. Defendants shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendants' position and any supporting documentation relied upon by Defendants.

51. The United States shall serve its Statement of Position within forty-five (45) days of receipt of Defendants' Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendants, unless Defendants file a motion for judicial review of the dispute in accordance with the following Paragraph.

52. Defendants may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIII (Notices and Submissions) of this Consent Decree, a motion requesting judicial resolution of the dispute. The motion must be filed within ten (10) days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendants' position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

53. The United States shall respond to Defendants' motion within the time period

allowed by the Local Rules of this Court. Defendants may file a Reply Memorandum, to the extent permitted by the Local Rules.

54. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 50 pertaining to the adequacy or appropriateness of plans, reports or other items required to be submitted pursuant to this Consent Decree for EPA approval; or the adequacy of the performance of work undertaken pursuant to this Consent Decree, the Defendants shall have the burden of demonstrating, based upon the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 50, Defendants shall bear the burden of demonstrating that its position complies with this Consent Decree.

55. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendants under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 39. If Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

X. INFORMATION COLLECTION AND RETENTION

56. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendants or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendants' compliance with this Consent Decree.

57. Until five (5) years after the termination of this Consent Decree, Defendants shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendants' performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Defendants shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

58. At the conclusion of the information-retention period provided in the preceding

Paragraph, Defendants shall notify the United States at least ninety (90) days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendants shall deliver any such documents, records, or other information to EPA. Defendants may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants assert such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendants. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

59. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendants to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

60. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the Date of Lodging of this Consent Decree.

61. The United States reserves all legal and equitable remedies available to enforce

the provisions of this Consent Decree, except as stated in Paragraph 60. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under RCRA or the implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 60. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendants' Facilities, whether related to the violations addressed in this Consent Decree or otherwise.

62. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, or other appropriate relief relating to the BUR Facility or the UOR Facility, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claims splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 60 of this Section.

63. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendants are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendants' compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in

any manner that Defendants' compliance with any aspect of this Consent Decree will result in compliance with provisions of RCRA, 42 U.S.C. §§ 6901 et seq., or any other provisions of federal, State, or local laws, regulations, or permits.

64. This Consent Decree does not limit or affect the rights of Defendants or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendants, except as otherwise provided by law.

65. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not a party to this Consent Decree.

XII. COSTS

66. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendants.

XIII. NOTICES AND SUBMISSIONS

67. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-7-1-08350

To U.S. EPA:

Amelia Welt Katzen
Senior Enforcement Counsel
USEPA Region 1
1 Congress Street
Suite 1100
Boston, MA 02114-2023

and

Richard Hull
Environmental Engineer
USEPA Region 1
1 Congress Street
Suite 1100
Boston, MA 02114-2023

To BUR/UOR:

David Carabetta
President
Bridgeport United Recycling, Inc.
United Oil Recovery, Inc.
14-16 West Main Street
Meriden, CT 06451

William Morris
Environmental Director
Bridgeport United Recycling, Inc.
United Oil Recovery, Inc.
14-16 West Main Street
Meriden, CT 06451

and

Mark Zimmermann, Esq.
Updike Kelly & Spellacy, PC
One State Street
Hartford CT 06123

68. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

69. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIV. EFFECTIVE DATE

70. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XV. RETENTION OF JURISDICTION

71. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections IX and XVI, or effectuating or enforcing compliance with the terms of this Decree.

XVI. MODIFICATION

72. This Consent Decree contains the entire agreement of the Parties and shall not be modified by any prior oral or written agreement, representation or understanding. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all of the

Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

73. Any disputes concerning modification of this Decree may be resolved pursuant to Section IX (Dispute Resolution) of this Decree, provided, however, that instead of the burden of proof provided in Paragraph 54, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVII. TERMINATION

74. After Defendants have completed the requirements of Section V (Compliance Requirements) of this Consent Decree, have thereafter maintained continuous satisfactory compliance with this Consent Decree for a period of two years after the Effective Date of this Consent Decree, have complied with all other requirements of this Consent Decree, and have paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Defendants may serve upon the United States a Request for Termination, stating that Defendants have satisfied those requirements, together with all necessary supporting documentation.

75. Following receipt by the United States of Defendants' Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendants have satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

76. If the United States does not agree that the Decree may be terminated, Defendants

may invoke Dispute Resolution under Section IX of this Decree. However, Defendants shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 50 of Section IX, until sixty (60) days after service of its Request for Termination.

XVIII. PUBLIC PARTICIPATION

77. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. This Consent Decree is also subject to an opportunity for a public meeting under RCRA Section 7003(d), 42 U.S.C. § 6973(d). Defendants consent to entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendants in writing that it no longer supports entry of the Decree.

XIX. SIGNATORIES/SERVICE

78. Each undersigned representative of the Defendants and the Deputy Section Chief of the Environmental Enforcement Section of the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

79. This Consent Decree may be signed in counterparts and its validity shall not be challenged on that basis. Defendants agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service

requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XX. INTEGRATION

80. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXI. FINAL JUDGMENT

81. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendants.

SO ORDERED this _____ day of _____, 200__.

UNITED STATES DISTRICT JUDGE
DISTRICT OF CONNECTICUT

The undersigned party consents to the Consent Decree in the matter of United States v. Bridgeport United Recycling, Inc., et al. (D. CT).

FOR THE UNITED STATES:

RONALD J. TENPAS

Acting Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

ELLEN MAHAN

Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

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KEVIN J. O'CONNOR

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District of Connecticut

JOHN HUGHES

Assistant U.S. Attorney
157 Church Street, 23rd Floor
New Haven, CT 06510

The undersigned party consents to the Consent Decree in the matter of United States v. Bridgeport United Recycling, Inc., et al. (D. CT).

FOR THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY:

SUSAN STUDLIEN
Director, Office of Environmental Stewardship
USEPA Region 1
1 Congress Street
Suite 1100
Boston, MA 02114-2023

AMELIA WELT KATZEN
Senior Enforcement Counsel
USEPA Region 1
1 Congress Street
Suite 1100
Boston, MA 02114-2023

The undersigned party consents to the Consent Decree in the matter of United States v. Bridgeport United Recycling, Inc., et al. (D. CT).

FOR DEFENDANTS BRIDGEPORT UNITED
RECYCLING, INC. and UNITED OIL RECOVERY, INC.

DAVID CARABETTA
President
Bridgeport United Recycling, Inc.
United Oil Recovery, Inc.
14-16 West Main Street
Meriden, CT 06451